

1 SEDGWICK, DETERT, MORAN & ARNOLD LLP
BRUCE D. CELEBREZZE Bar No. 102181
2 bruce.celebrezze@sdma.com
MICHELLE Y. MCISAAC BAR NO. 215294
3 michelle.mcisaac@sdma.com
One Market Plaza
4 Steuart Tower, 8th Floor
San Francisco, California 94105
5 Telephone: (415) 781-7900
Facsimile: (415) 781-2635

6 Attorneys for Defendants
7 HARTFORD LIFE INSURANCE COMPANY
and HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY
8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 VICKI CAPRIO and DUANE A.
12 BARBAROTTO as decedent Nicholas J.
Barbarotto's Successor in Interest,

13 Plaintiff,

14 v.

15 HARTFORD LIFE INSURANCE
16 COMPANY, a corporation doing business
as THE HARTFORD and HARTFORD
17 LIFE AND ACCIDENT INSURANCE
COMPANY, and DOES 1 through 20,
18 inclusive,

19 Defendants.

CASE NO. C 08-0338 CW

**REQUEST FOR JUDICIAL NOTICE OF
DEFENDANTS HARTFORD LIFE
INSURANCE COMPANY AND
HARTFORD LIFE AND ACCIDENT
INSURANCE COMPANY IN SUPPORT OF
MOTION TO DISMISS PLAINTIFF'S
COMPLAINT**

JUDGE: Hon. Claudia Wilken
CTRM: 2, 4th Floor
DATE: March 6, 2008
TIME: 2:00 p.m.

20
21 Defendants Hartford Life Insurance Company and Hartford Life and Accident Insurance
22 Company (jointly "Hartford") hereby request that the Court take judicial notice of the following
23 facts pursuant to Rule 201 of the Federal Rules of Evidence:

24 1. The complaint filed on February 22, 2006 in the United States District Court for
25 the Northern District of California, styled *Nicholas J. Barbarotto, individually and as Trustee of*
26 *the Nicholas J. Barbarotto Revocable Living Trust Agreement dated November 2, 2005, plaintiff,*
27 *vs. Hartford Life Insurance Company, a corporation doing business as The Hartford and*
28 *Hartford Life and Accident Insurance Company, and Does 1-10, defendants, Case No. C06-*

1 1278. Attached as Exhibit 1 is a true and correct copy of the complaint.

2 2. Stipulation and Order For Dismissal of Entire Action with Prejudice entered on
3 October 19, 2006 in the United States District Court for the Northern District of California, in
4 *Nicholas J. Barbarotto, individually and as Trustee of the Nicholas J. Barbarotto Revocable*
5 *Living Trust Agreement dated November 2, 2005, plaintiff, vs. Hartford Life Insurance*
6 *Company, a corporation doing business as The Hartford and Hartford Life and Accident*
7 *Insurance Company, and Does 1-10, defendants*, Case No. C06-1278. Attached as Exhibit 2 is a
8 true and correct copy of the order of dismissal.

9 DATED: January 25, 2008

SEDGWICK, DETERT, MORAN & ARNOLD LLP

10
11 By: s/Michelle Y. McIsaac

12 BRUCE D. CELEBREZZE

13 MICHELLE Y. MCISAAC

14 Attorneys for Defendants

15 HARTFORD LIFE INSURANCE COMPANY

16 and HARTFORD LIFE AND ACCIDENT

17 INSURANCE COMPANY
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EXHIBIT 1

02/22/2006 10:35 787-769-2999

WILLIAMS WESTER HALL

PAGE 05/10

1 Barry F. Wester, Esq. (103588)
Matthew D. Brekhus, Esq. (119251)
2 FLYNN, WILLIAMS, WESTER & HALL, LLP
775 Baywood Drive, Suite 305
3 Petaluma, CA 94954
Telephone: (707) 769-2990
4 Facsimile: (707) 769-2999

5 Attorneys for Plaintiff
NICHOLAS J. BARBAROTTO

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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11 NICHOLAS J. BARBAROTTO, individually
and as Trustee of the NICHOLAS J.
12 BARBAROTTO Revocable Living Trust
Agreement dated November 2, 2005,

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Plaintiff,

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vs.

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HARTFORD LIFE INSURANCE COMPANY,
a corporation doing business as THE
HARTFORD and HARTFORD LIFE AND
ACCIDENT INSURANCE COMPANY, and
DOES 1-10,

19

Defendants.

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21

Plaintiff NICHOLAS J. BARBAROTTO alleges as follows:

22

JURISDICTION AND VENUE

23

24

25

1. Plaintiff NICHOLAS J. BARBAROTTO ("BARBAROTTO") was at the time of
the incidents alleged herein, and is now, a resident of the County of San Mateo, in the state of
California.

26

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2. At all relevant times herein, defendant THE HARTFORD ("HARTFORD") was,
and is, a corporation with its principal place of business in Connecticut, and is authorized to

COMPLAINT; DEMAND FOR JURY TRIAL

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NORTHERN DISTRICT OF CALIFORNIA

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Case No.:

COMPLAINT; DEMAND FOR JURY
TRIAL

BY FAX

1 transact business in California, and at all relevant times herein was transacting business in the
2 state of California.

3 3. Jurisdiction of this court is invoked pursuant to 28 USC §1332(a)(1). Plaintiff and
4 defendants are citizens of different states. The amount in controversy exceeds \$75,000 by virtue
5 of contracts and extra-contractual damages alleged herein, exclusive of costs and interest, as to
6 plaintiff. Venue is proper in this district as plaintiff resides in this district and was damaged by
7 defendants as a direct result of the wrongful acts alleged herein in this district.

8 GENERAL ALLEGATIONS

9 4. That on or about February 1, 2006, Plaintiff BARBAROTTO gave, transferred
10 and assigned all of his right, title and interest in and to the within legal action, and to all of his
11 claims as the beneficiary for the benefits and proceeds to which her is entitled in said action
12 under and by virtue of the accidental death insurance policies referred to thereon issued and
13 underwritten by the Defendants and each of them, to himself as Trustee and to his successor
14 trustees as an asset includable in and subject to the terms, conditions and provisions of that
15 certain revocable living trust agreement executed by him as Trustor and Trustee dated November
16 2, 2005.

17 5. At all relevant times, defendants, and each of them, were the agents and
18 employees of each of the remaining defendants, and were at all times acting within the purpose
19 and scope of said agency and employment, and each defendant has ratified and approved the acts
20 of his agent.

21 6. Defendant HARTFORD issued an accidental death policy, number ADD-1037,
22 to the State Bar of California covering BARBAROTTO and his deceased wife Tamara (herein
23 after "deceased" or "decedent"), in the amount of \$125,000.

24 7. Defendant HARTFORD also issued a separate accidental death policy covering
25 BARBAROTTO and decedent, number ADD-6460, in the amount of \$50,000.

26 8. All premiums due under the above-mentioned HARTFORD Policies (here after
27 "the Policies") were paid to defendants at all relevant times and BARBAROTTO and/or
28 decedent have performed all obligations under the Policies.

COMPLAINT; DEMAND FOR JURY TRIAL

1 9. Decedent was injured at home as a result of an accident on July 2, 2002.

2 10. On October 19, 2002, decedent expired as a result of the injurious effects caused
3 by the accident.

4 11. BARBAROTTO filed timely claims for the total death indemnity under the
5 policies.

6 12. HARTFORD failed to conduct a reasonable investigation and acted unreasonably,
7 arbitrarily and capriciously in denying the claims on made by BARBAROTTO pursuant to the
8 policies, subsequent to the death of decedent. HARTFORD wrongfully denied the claim of
9 BARBAROTTO relating to policy number ADD-1037 on December 14, 2004, and wrongfully
10 denied the claim of BARBAROTTO relating to policy number ADD-6460 on June 7, 2005.

11 **FIRST CAUSE OF ACTION**

12 **(Breach of Contract)**

13 PLAINTIFF, BARBAROTTO, FOR A FIRST CAUSE OF ACTION AGAINST
14 DEFENDANT HARTFORD FOR BREACH OF CONTRACT, ALLEGES:

15 13. Plaintiff BARBAROTTO refers to paragraphs 1 through 12 of the General
16 Allegations and incorporates those paragraphs as though set forth in full in this Cause of Action.

17 14. BARBAROTTO has performed all conditions on his part to be performed under
18 the insurance contracts and all premiums due under said contracts have been paid.

19 15. Defendant HARTFORD has breached the subject insurance contracts by refusing,
20 without just cause, to pay plaintiff's claims, and refusing, without just cause, to undertake and
21 complete a reasonable investigation of said claims.

22 16. As a direct result of defendant's breach of the subject insurance contracts,
23 BARBAROTTO has suffered contractual damages under the terms and conditions of the Policies,
24 and other incidental damages and out-of-pocket expenses, all in a sum to be determined according
25 to proof at the time of trial.

26 **SECOND CAUSE OF ACTION**

27 **(Breach of Duty of Good Faith and Fair Dealing)**

28
COMPLAINT; DEMAND FOR JURY TRIAL

1 PLAINTIFF BARBAROTTO, FOR A SECOND CAUSE OF ACTION AGAINST
2 DEFENDANT HARTFORD FOR A BREACH OF DUTY OF GOOD FAITH AND FAIR
3 DEALING, ALLEGES:

4 17. BARBAROTTO refers to paragraphs 1 through 12 of the General Allegations,
5 and paragraphs 13 through 16, inclusive of the First Cause of Action, and incorporates those
6 paragraphs as though set forth in full in full in this cause of action. In addition, BARBAROTTO
7 alleges, as follows:

8 18. Defendant breached their duty of good faith and fair dealing owed to plaintiff in
9 the following respects:

- 10 (a) Unreasonable and bad faith failure to pay benefits to plaintiff at a time when
11 defendant knew plaintiff was entitled to said benefits under the terms of the
12 Policies.
- 13 (b) Unreasonably withholding payments from plaintiff in bad faith knowing
14 plaintiff's claim for benefits under the Policies to be valid.
- 15 (c) Failing to pay plaintiff death benefits pursuant to said claims at a time when
16 defendant had insufficient information within their possession directly
17 opposing said action.
- 18 (d) Not attempting in good faith to effectuate a prompt, fair and equitable
19 settlement of plaintiff's claims for death benefits in which liability had
20 become reasonably clear.
- 21 (e) Bad faith failure to provide a reasonable explanation of the basis relied upon
22 in the Policies, in relation to the applicable facts, for the denial of plaintiff's
23 claims for death benefits.
- 24 (f) Unreasonably and in bad faith requiring plaintiff to provide unnecessary and
25 unreasonable information and documentation after already knowing that
26 plaintiff was entitled to receipt of the death benefit.
- 27 (g) Plaintiff is informed and believes and thereon alleges that defendant has
28 breached its duty of good faith and fair dealing owed to plaintiff by other acts

COMPLAINT; DEMAND FOR JURY TRIAL

1 or omissions of which plaintiff is presently unaware. Plaintiff reserves the
2 right to seek leave of court to amend this complaint at such time as plaintiff
3 discovers the other acts or omissions of said defendants constituting such
4 breach.

5 19. As a result of the aforementioned wrongful conduct of defendants, plaintiff has
6 suffered, and will continue to suffer in the future, damages under the Policy, plus prejudgment
7 interest, for a total amount to be show at the time of trial.

8 20. As a further result of the aforementioned wrongful conduct of defendant, plaintiff
9 has suffered anxiety, worry, mental and emotional distress, and other incidental damages and out
10 of pocket expenses, all to plaintiff's general damage in a sum to be determined a the time of trial.

11 21. As a further result of the aforementioned wrongful conduct of defendant, plaintiff
12 was compelled to retain legal counsel to obtain the benefits due under the Policy. Therefore,
13 defendant is liable to plaintiff for those expenses and attorney fees reasonably necessary and
14 incurred by plaintiff to obtain the policy benefits in a sum to be determined at the time of trial.

15 22. Defendant's conduct described herein was intended by the defendant to cause
16 injury to the plaintiff, or was despicable conduct carried out by the defendant, with a willful and
17 conscious disregard of the rights of plaintiff, subjected plaintiff to cruel and unjust hardship in
18 conscious disregard of plaintiff's rights, and was an intentional misrepresentation, deceit, or
19 concealment of a material fact known to the defendant, with the intention to deprive plaintiff of
20 property, legal rights or to otherwise cause injury, such as to constitute malice, oppression or
21 fraud under CCP §3294, thereby entitling plaintiff to punitive damages in an amount appropriate
22 to punish, or set an example, of defendant.

23
24 WHEREFORE, BARBAROTTO prays for judgment against defendant, and each of
25 them, as follows:

26 1. Damages for failure to provide benefits under the Policy, plus interest, including
27 prejudgment interest, in a sum to be determined at the time of trial;
28

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1 2. General damages for mental and emotional distress and other incidental damages
2 in a sum to be determined at the time of trial;

3 3. Punitive and exemplary damages in an amount appropriate to punish or set an
4 example of defendant;

5 4. For expenses and attorneys' fees reasonably incurred to obtain the Policy benefits
6 in a sum to be determined at the time of trial;

7 5. For costs of suit incurred herein; and

8 6. For such other and further relief as the Court deems just and proper.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands trial by jury on all issues against HARTFORD.

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12 Dated: February 22, 2006

FLYNN, WILLIAMS, WESTER & HALL, LLP

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14 BY *Barry Wester*
15 BARRY WESTER
16 Attorneys for Plaintiff
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COMPLAINT; DEMAND FOR JURY TRIAL

EXHIBIT 2

1 FLYNN, WILLIAMS, WESTER & HALL, LLP
2 BARRY F. WESTER Bar No. 103588
3 MATTHEW D. BREKHUS Bar No. 119251
4 775 Baywood Drive, Suite 305
5 Petaluma, California 94954
6 Telephone: (707) 769-2990
7 Facsimile: (707) 769-2999
8 mbrekhus@fwwh.com

9 Attorneys for Plaintiff
10 NICHOLAS J. BARBAROTTO

11 SEDGWICK, DETERT, MORAN & ARNOLD LLP
12 BRUCE D. CELEBREZZE Bar No. 102181
13 DENNIS G. ROLSTAD Bar No. 150006
14 MICHELLE Y. McISAAC Bar No. 215294
15 One Market Plaza
16 Steuart Tower, 8th Floor
17 San Francisco, California 94105
18 Telephone: (415) 781-7900
19 Facsimile: (415) 781-2635

20 Attorneys for Defendants
21 HARTFORD LIFE INSURANCE COMPANY and
22 HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY

23 UNITED STATES DISTRICT COURT
24 NORTHERN DISTRICT OF CALIFORNIA

25 NICHOLAS J. BARBAROTTO,
26 individually and as Trustee of the
27 NICHOLAS J. BARBAROTTO Revocable
28 Living Trust Agreement dated
November 2, 2005,

Plaintiff,

v.

HARTFORD LIFE INSURANCE
COMPANY, a corporation doing business
as THE HARTFORD and HARTFORD
LIFE AND ACCIDENT INSURANCE
COMPANY, and DOES 1-10,

Defendants.

CASE NO. C 06 1278 CRB

**STIPULATION AND ~~PROPOSED~~
ORDER FOR DISMISSAL OF ENTIRE
ACTION WITH PREJUDICE**

1 IT IS HEREBY STIPULATED by and between plaintiff Nicholas J. Barbarotto and
2 defendants Hartford Life Insurance Company and Hartford Life and Accident Insurance
3 Company, by and through their respective attorneys of record herein, that this entire action shall
4 be DISMISSED WITH PREJUDICE, each party to bear his or its own attorneys' fees and costs.

5 DATED: October 19, 2006 FLYNN, WILLIAMS, WESTER & HALL, LLP

6
7 By: 

8 MATTHEW D. BREKHUS
9 Attorneys for Plaintiff
10 NICHOLAS J. BARBAROTTO

11 DATED: October , 2006

12 SEDGWICK, DETERT, MORAN & ARNOLD LLP

13
14 By: _____

15 DENNIS G. ROLSTAD
16 MICHELLE Y. MCISAAC
17 Attorneys for Defendants
18 HARTFORD LIFE INSURANCE COMPANY and
19 HARTFORD LIFE AND ACCIDENT INSURANCE
20 COMPANY

21 IT IS SO ORDERED.

22 DATED: October 19, 2006

23 HONORABLE CHARLES R. BREYER
24 UNITED STATES DISTRICT JUDGE

